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United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. GENARO SMITH-BALTIHER, Defendant.	Criminal Case No. 07CR3161-LAB UNITED STATES' AMENDED PROPOSED JURY INSTRUCTION DEFINING ELEMENTS OF THE OFFENSE Date: January 8, 2008 Time: 9:00 a.m. Court: Hon. Larry A. Burns

COMES NOW the plaintiff, United States of America, by and through its counsel, Karen P. Hewitt, United States Attorney, and Paul L. Starita, Assistant United States Attorneys, respectfully submits the attached Proposed Jury Instruction.

DATED: June 9, 2008

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

/s/ ***Paul L. Starita***
PAUL L. STARITA
Assistant United States Attorney

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 1

The defendant is charged in the Indictment with being an alien who, after deportation, was found in the United States in violation of Section 1326(a) and (b) of Title 8 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant was deported from the United States;

Second, after deportation, the defendant voluntarily entered the United States;

Third, when the defendant entered he knew he was entering the United States, or after the defendant entered the United States he knew that he was in the United States and knowingly remained;

Fourth, the defendant was found in the United States without having obtained the consent of the Attorney General or the Secretary of the Department of Homeland Security to reapply for admission into the United States; and

Fifth, the defendant was an alien at the time of the defendant's entry into the United States.

An alien is a person who is not a natural-born or naturalized citizen of the United States.

Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury Instructions for the Ninth Circuit, § 9.5B [2007 Edition - West Publishing Co.]

[Deported Alien Found in the United States]

COURT'S INSTRUCTION NO. ____

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Fifth, the defendant was an alien at the time of the defendant's entry into the United States.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. GENARO SMITH-BALTIHER, Defendant.	))))))))))))	Criminal Case No. 07CR3161-LAB CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, Paul L. Starita, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **UNITED STATES AMENDED PROPOSED JURY INSTRUCTION DEFINING ELEMENTS OF THE OFFENSE** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. Joseph M. McMullen, Esq.
   Federal Defenders of San Diego, Inc.
   joseph_mcmullen@fd.og

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-ECF participants on this case:

None

the last known address, at which place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 9, 2008.

/s/ ***Paul L. Starita***
PAUL L. STARITA
Assistant U.S. Attorney